THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

C.M.A.Nos.3207, 3762 of 2003 and 410 of 2004

Date:02nd August, 2012

Between:

G.Balayya S/o.Chalamayya

... Appellant in all the CMAs

a n d

Sariam Bharathi W/o.Mohan Rao & Ors.

….Respondents in CMA No.3207 of 2003

Atram Bhaskara Rao S/o. Chakrapani & Ors.

…Respondents in CMA No.3762 of 2003

Atram Ramanamma W/o.Chakrapani & Ors.

…Respondents in CMA No.410 of 2004

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COMMON JUDGMENT:

These three Civil Miscellaneous Appeals are directed against the judgments, dated 15.04.2003, passed in M.V.O.P.Nos.521, 516 and 520 of 1999, on the file of the Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Rajahmundry, East Godavari District, respectively.

2. Facts in brief are: The appellant is the owner of Ambassador car bearing No.AP 7 B 5657 and it is insured with the National Insurance Company Limited, Kakinada, East Godavari District. On 28.06.1999, the Ambassador car was proceeding to Tallarevu. There were passengers in the car and they were stated to be fare paid passengers. On reaching Pandimamidi junction culvert at

Rampachodavaram, the driver drove the car in a rash and negligent manner and as a result, the car went off the road and fell into a canal. The inmates of the car received injuries. The injured viz., Atram Bhaskara Rao, Atram Ramanamma and Sariam Bharathi filed claim petitions under Section 166 of the Motor Vehicles Act, 1988, in the court of the Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Rajahmundry, East Godavari District, claiming compensation for the injuries received by them in the road accident on 29.06.1999 at about 4.30 A.M. More precisely, Atram Bhaskara Rao filed MVOP No.516 of 1999; Atram Ramanamma filed MVOP No.520 of 1999 and Sariam Bharathi filed MVOP No.521 of 1999. The injured sought compensation from the driver, owner and insurer of the ambassador car bearing No.AP 7 B 5657. The driver of the car remained *ex parte.* The owner and insurer of the car filed counters opposing the claims of the injured. The learned II Additional District Judge, by judgments, dated 15.04.1999, granted compensation to the injured and directed the insurer to pay the compensation and recover the same from the owner of the car. For better appreciation, I may refer the relevant portion of the judgment, dated 15.04.2003, passed in MVOP No.520 of 1999 and it is thus:

> "In the present case also the accident vehicle Ambassador car bearing No.AP 7 B 5657 was insured with the third respondent as private vehicle and not as a taxi. Ex.B-1 is the copy of the insurance policy. At the time of accident, nine passengers and two drivers were travelling in the Car in violation of the policy conditions. In the decisions cited above, it was held that even though there is some breach or violation of conditions of the policy, the Insurance Company is still liable to pay compensation and after paying compensation to the petitioner, the Insurance Company can recover the said amount from the owner of the vehicle. Therefore, I am of the opinion that respondents 2 and 3 are liable to pay compensation to the petitioner and the third respondent after paying compensation to the petitioner can recover the same from the owner of the vehicle i.e., the second respondent herein. I accordingly answer this issue."

Assailing the said judgments to the extent of giving liberty to the insurer to recover the compensation amount from the owner, the owner

has filed these three Civil Miscellaneous Appeals.

3. Heard learned counsel appearing for the appellant/owner and perused the judgments impugned in these appeals.

4. It is contended by the learned counsel appearing for the appellant/owner that the vehicle has been insured with the National Insurance Company Limited and the policy was in force as on the date of the accident, and therefore, it was the Insurance Company, which was liable to pay the compensation and there was no obligation on the part of the owner of the vehicle to reimburse the insurer. The learned counsel refers the copy of the Insurance Policy, which has been marked as Ex.B1. By referring the policy, it is contended by the learned counsel that the owner has taken the policy in respect of six passengers.

5. The contention of the learned counsel appearing for the appellant/owner of the car appears to be impressive at the first blush, but, on close scrutiny of the record, I do not detain myself long to reject the same. The car which has been insured with the National Insurance Company Limited under Ex.B1 Policy is a private vehicle. It was not supposed to be used as a hired vehicle. The material brought on record clearly indicates that the vehicle was used for carrying passengers on hire. In a way, the use of the vehicle is in contravention of the conditions of the Policy. The learned Additional District Judge, having taken note of the infraction of the conditions of the policy, granted liberty to the insurer to recover the compensation amounts from the owner of the car. I do not see any flaw in the judgments impugned in these Civil Miscellaneous Appeals.

6. Accordingly, all the Civil Miscellaneous Appeals fail and they are hereby dismissed. No order as to costs.

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B. SESHASAYANA REDDY, J.

Date:02nd August, 2012.

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